THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.16546 OF 2006

DATED: 12TH OCTOBER, 2006.

Between :

Abdul Khader .. Petitioner

And

1. The Forest Range Officer, Luxettipet, Adilabad District; and 3 others. … Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.16546 OF 2006

ORDER :

This writ petition is filed seeking a declaration that the action of the 1st respondent in not releasing the petitioner's vehicle Eicher Van bearing Regn.No.AP-1-T-3383 in terms of the order of the 2nd respondent dated 29-7-2006 as arbitrary and illegal.

The petitioner claims to be the owner of the vehicle bearing Regn.No.AP-1-T-3383. The said vehicle, while transporting 30 teak logs, was seized on 25-4-2006 at the forest check-post of Gudem, Luxettipet Range alleging commission of a forest offence. After due enquiry, the 2nd respondent - Authorised Officer/Sub-Divisional Forest Officer, Luxetipet - passed an order dated 29-7-2006 compounding the said offence for Rs.82,000/- and confiscating the six teak logs involved in the offence to the State. Accordingly, there was a specific direction to release 24 teak logs as well as the vehicle belonging to the petitioner. The said order was passed in exercise of powers under Section 44 (2-A) of The A.P. Forest Act, 1967. This writ petition has been filed alleging that in spite of the said order, the 1st respondent failed to release the vehicle in question.

This Court while directing Rule Nisi, passed an interim order dated 14-8-2006 directing the respondents to release the vehicle subject to undertaking that the same shall not be alienated pending further orders. In spite of the same, the vehicle has not been released, but on the other hand the Conservator of Forests, in exercise of powers under Section 44 (2-D) of the A.P. Forest Act, 1967 passed an

order on 21-8-2006 thereby setting aside the order dated 29-7-2006 and directing the 2nd respondent to conduct re-enquiry and pass fresh orders after examining all the witnesses of the case. In the circumstances, the prayer in the writ petition has been suitably amended seeking a declaration that the order passed by the Conservator of Forests, dated 21-8-2006 is arbitrary, illegal and violative of the principles of natural justice.

I have heard the learned Counsel for both the parties and perused the material on record.

At the outset, it is to be noted that under Section 44 (2-D) of the A.P. Forest Act, 1967 (for short, 'the Act') though it is open to the Conservator of Forests either *suo motu* or on an application to call for and examine the record of any order passed under sub-section (2-D) of the Act and to make appropriate orders, the proviso to sub-section (2-D) made it clear that no order prejudicial to any person can be passed without giving him an opportunity.

The specific plea of the petitioner that the order dated 21-8-2006 was passed without affording such opportunity to the petitioner has not been denied by the respondents.

In the circumstances, on the face of it, the order dated 21-8-2006 being not in conformity with the mandatory requirement of the proviso to sub-section (2-D) of Section 44 of the Act, cannot be sustained and is liable to be set aside on that ground alone.

Accordingly, without expressing any opinion on merits, the impugned order dated 21-8-2006 is set aside and the writ petition is disposed of leaving it open to the Conservator of Forests, Adilabad to pass appropriate orders in accordance with law after affording an opportunity to the petitioner in terms of sub-section (2-D) of Section 44 of the A.P. Forest Act, 1967. Keeping in view that the vehicle in question is still under detention, it is made clear that the Conservator of Forests shall complete the enquiry in terms of the above directions within a period of two weeks from the date of receipt of this order.

Writ Petition is accordingly disposed of. No costs.

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G. ROHINI, J.

Dt. 12-10-2006

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